S.B.Civil Writ Petition NO.280/2005

Smt. Radha Kanwar

vs

Himmat Singh & Ors.

DATE OF ORDER : - 3.2.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. Rameshwar Hedau, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 30th Oct., 2004 by which the trial court decided the application of the plaintiff filed under Order 8 Rule 10 CPC and defendant's application filed under Section 5 of the Limitation Act.

The plaintiff prayed that the suit of the plaintiff be decreed as no written statement was filed within the prescribed period of limitation whereas defendants sought condonation of delay in filing the written statement. The trial court after considering the facts of the case condoned the delay in filing the written statement and consequently dismissed the plaintiff's application filed under Order 8 Rule 10 CPC.

Since the court below has exercised its discretionary jurisdiction on the basis of the facts of the case in condoning the delay, this court is not inclined to interfere in supervisory jurisdiction under Article 227 of the Constitution of India looking the facts of the case. However, the petitioner will be free to challenge the impugned order in case any occasion arises for the petitioner to do so.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-